

1 SENATE BILL NO. 444

2 INTRODUCED BY TESTER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SECURITIES LAWS, INSURANCE LAWS,
5 AND ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS TO PROVIDE FOR THE
6 PROTECTION OF CONSUMERS AND SENIOR CITIZENS AND PERSONS WITH DEVELOPMENTAL
7 DISABILITIES WITH RESPECT TO THE MARKETING OF SECURITIES AND INSURANCE PRODUCTS;
8 RESTRICTING THE MANNER IN WHICH INSURANCE PRODUCERS MAY ACT AS LEGAL GUARDIANS OF
9 CLIENTS; EXPANDING THE DEFINITION OF "SECURITY" TO INCLUDE VIATICAL SETTLEMENT
10 PURCHASE AGREEMENTS; MODIFYING THE DEFINITION OF "VIATICAL SETTLEMENT CONTRACT";
11 PROVIDING FOR PENALTIES AND OTHER REMEDIES WITH RESPECT TO PERSONS FAILING TO
12 RESPOND TO CERTAIN INFORMATION REQUESTS OF THE INSURANCE COMMISSIONER; EXPANDING
13 THE SCOPE FOR WHICH INJUNCTIONS AND OTHER REMEDIES ARE AVAILABLE UNDER INSURANCE
14 LAWS; PROVIDING ADDITIONAL PENALTIES FOR DOMESTIC INSURERS FAILING TO PROPERLY
15 MAINTAIN RECORDS; MODIFYING PENALTIES FOR INSURANCE PRODUCERS OR ADJUSTERS
16 OPERATING WITHOUT A LICENSE; PROVIDING THAT THE DEFINITION OF "EXPLOITATION" UNDER
17 ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE LAWS INCLUDES ACTS DONE IN
18 THE COURSE OF AN OFFER OR SALE OF SECURITIES OR INSURANCE PRODUCTS; IMPOSING A
19 POSSIBLE FELONY SENTENCE FOR A CONVICTION OF ELDER AND PERSONS WITH DEVELOPMENTAL
20 DISABILITIES ABUSE; AMENDING SECTIONS 30-10-103, 33-1-315, 33-1-318, 33-3-401, 33-17-1004,
21 33-20-1302, 33-20-1315, 52-3-803, AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
22 AND AN APPLICABILITY DATE."

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25
26 **NEW SECTION. Section 1. Restrictions on acting as legal guardian of insured or policyholder.**

27 (1) Except as otherwise approved by the commissioner or court order, an insurance producer may not act as
28 a legal guardian of an insured or policyholder if the insurance producer conducts insurance business with the
29 insured or policyholder when the insurance business includes but is not limited to the solicitation, offer, sale, or
30 replacement of insurance or a contract.

1 (2) This section does not apply to immediate family members.

2

3 **Section 2.** Section 30-10-103, MCA, is amended to read:

4 **"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires
5 otherwise, the following definitions apply:

6 (1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities
7 for the account of others or for the person's own account.

8 (b) The term does not include:

9 (i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

10 (ii) a person who does not have a place of business in this state if the person effects transactions in this
11 state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers,
12 or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the
13 Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional
14 buyers, whether acting for themselves or as trustee.

15 (2) "Commissioner" means the securities commissioner of this state.

16 (3) (a) "Commodity" means:

17 (i) any agricultural, grain, or livestock product or byproduct;

18 (ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized
19 as precious, semiprecious, or otherwise;

20 (iii) any fuel, whether liquid, gaseous, or otherwise;

21 (iv) foreign currency; and

22 (v) all other goods, articles, products, or items of any kind.

23 (b) Commodity does not include:

24 (i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

25 (ii) real property or any timber, agricultural, or livestock product grown or raised on real property and
26 offered and sold by the owner or lessee of the real property; or

27 (iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private
28 sale by the owner.

29 (4) "Commodity Exchange Act" means the federal statute of that name.

30 (5) "Commodity futures trading commission" means the independent regulatory agency established by

1 congress to administer the Commodity Exchange Act.

2 (6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase
3 or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or
4 purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is
5 intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery
6 contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any
7 commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be
8 offered or sold for speculation or investment purposes.

9 (b) A commodity investment contract does not include a contract or agreement that requires, and under
10 which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the
11 purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or
12 agreement. The purchaser is not considered to have received physical delivery of the total amount of each
13 commodity to be purchased under the contract or agreement when the commodity or commodities are held as
14 collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the
15 purchase of each commodity or commodities.

16 (7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account,
17 agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or
18 more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance
19 guaranty, decline guaranty, or otherwise.

20 (b) The term does not include an option traded on a national securities exchange registered with the
21 U.S. securities and exchange commission.

22 (8) (a) "Federal covered adviser" means a person who is registered under section 203 of the Investment
23 Advisers Act of 1940.

24 (b) The term does not include a person who would be exempt from the definition of investment adviser
25 pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).

26 (9) "Federal covered security" means a security that is a covered security under section 18(b) of the
27 Securities Act of 1933 or rules promulgated by the commissioner.

28 (10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

29 (11) (a) "Investment adviser" means a person who, for compensation, engages in the business of
30 advising others, either directly or through publications or writings, as to the value of securities or as to the

1 advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular
2 business, issues or promulgates analyses or reports concerning securities.

3 (b) The term includes a financial planner or other person who:

4 (i) as an integral component of other financially related services, provides the investment advisory
5 services described in subsection (11)(a) to others for compensation, as part of a business; or

6 (ii) represents to any person that the financial planner or other person provides the investment advisory
7 services described in subsection (11)(a) to others for compensation.

8 (c) Investment adviser does not include:

9 (i) an investment adviser representative;

10 (ii) a bank, savings institution, trust company, or insurance company;

11 (iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of
12 the person's profession or who does not accept or receive, directly or indirectly, any commission, payment,
13 referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend
14 the purchase or sale of specific securities, and does not have custody of client funds or securities for investment
15 purposes;

16 (iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely
17 incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

18 (v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial
19 publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does
20 not consist of the rendering of advice on the basis of the specific investment situation of each client;

21 (vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

22 (vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely
23 incidental to the practice of the person's profession;

24 (viii) a federal covered adviser; or

25 (ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order
26 designate.

27 (12) (a) "Investment adviser representative" means:

28 (i) any partner of, officer of, director of, or a person occupying a similar status or performing similar
29 functions, or other individual, except clerical or ministerial personnel, employed by or associated with an
30 investment adviser who:

- 1 (A) makes any recommendation or otherwise renders advice regarding securities to clients;
- 2 (B) manages accounts or portfolios of clients;
- 3 (C) solicits, offers, or negotiates for the sale or sells investment advisory services; or
- 4 (D) supervises employees who perform any of the foregoing; and
- 5 (ii) with respect to a federal covered adviser, any person who is an investment adviser representative
- 6 with a place of business in this state as those terms are defined by the securities and exchange commission
- 7 under the Investment Advisers Act of 1940.
- 8 (b) The term does not include a salesperson registered pursuant to 30-10-201(1) whose performance
- 9 of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson
- 10 and for which the salesperson does not receive special compensation other than fees relating to the solicitation
- 11 or offering of investment advisory services of a registered investment adviser or of a federal covered adviser
- 12 who has made a notice filing under parts 1 through 3 of this chapter.
- 13 (13) "Issuer" means any person who issues or proposes to issue any security, except that with respect
- 14 to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of
- 15 interest or shares in an unincorporated investment trust not having a board of directors, or persons performing
- 16 similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or
- 17 persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the
- 18 trust or other agreement or instrument under which the security is issued.
- 19 (14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
- 20 (15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy
- 21 a security or interest in a security for value.
- 22 (16) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation,
- 23 a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are
- 24 evidenced by a security, an unincorporated organization, a government, or a political subdivision of a
- 25 government.
- 26 (17) "Precious metal" means the following, in coin, bullion, or other form:
- 27 (a) silver;
- 28 (b) gold;
- 29 (c) platinum;
- 30 (d) palladium;

- 1 (e) copper; and
- 2 (f) other items as the commissioner may by rule or order specify.
- 3 (18) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.
- 4 (19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or
5 interest in a security for value.
- 6 (20) (a) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer
7 or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer
8 or issuer is a salesperson only if the person otherwise comes within this definition.
- 9 (b) Salesperson does not include an individual who represents:
- 10 ~~(a)~~(i) an issuer in:
- 11 ~~(i)~~(A) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);
- 12 ~~(ii)~~(B) effecting transactions exempted by 30-10-105, except when registration as a salesperson,
13 pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105;
- 14 ~~(iii)~~(C) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the
15 Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933; or
- 16 ~~(iv)~~(D) effecting transactions with existing employees, partners, or directors of the issuer if no
17 commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
- 18 ~~(b)~~(ii) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2)
19 of the Securities Exchange Act of 1934.
- 20 (21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act
21 of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes
22 of those names.
- 23 (22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract;
24 commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any
25 profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable
26 shares; investment contract; voting-trust certificate; certificate of deposit for a security; viatical settlement
27 purchase agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments
28 out of production under a title or lease; or, in general, any interest or instrument commonly known as a security,
29 any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities,
30 including any interest in a security or based on the value of a security, or any certificate of interest or participation

1 in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase
2 any of the foregoing.

3 (b) Security does not include an insurance or endowment policy or annuity contract under which an
4 insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some
5 other specified period.

6 (23) "State" means any state, territory, or possession of the United States, as well as the District of
7 Columbia and Puerto Rico.

8 (24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell",
9 and "offer".

10

11 **Section 3.** Section 33-1-315, MCA, is amended to read:

12 **"33-1-315. Witnesses -- production of records -- subpoena -- failure to respond.** (1) With respect
13 to the subject of any examination or investigation being conducted by the commissioner, or the commissioner's
14 designee if general written authority has been given the designee by the commissioner, the commissioner or
15 the designee may subpoena witnesses and administer oaths or affirmations and examine any individual under
16 oath and may require and compel the production of records, books, papers, contracts, and other documents by
17 attachments, if necessary. Subpoenas of witnesses must be served in the same manner as if issued from a
18 district court.

19 (2) If in connection with ~~any~~ an examination of an insurer the commissioner or the commissioner's
20 designee desires to examine an officer, director, or manager who is outside this state, the commissioner or the
21 commissioner's designee may conduct and enforce by all appropriate and available means any examination
22 under oath in any other state or territory of the United States in which ~~an~~ the officer, director, or manager ~~may~~
23 ~~then presently be~~ is located, to the full extent permitted by the laws of ~~another~~ that state or territory.

24 (3) If a witness fails to obey a subpoena to appear before the commissioner or the commissioner's
25 designee or refuses to testify or answer any material question or to produce records, books, papers, contracts,
26 or documents when required to do so, the commissioner or the commissioner's designee shall institute
27 proceedings in the district court to compel obedience to the subpoena or other order or to punish the witness
28 for neglect or refusal to obey the summons or other order.

29 (4) Witness fees and mileage, if claimed, must be allowed on the same basis as for testimony in a
30 district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of

1 witnesses and their testimony must be itemized and paid by the person being examined if the person is found
 2 to have been in violation of the law as to the matter with respect to which the ~~witness was~~ witnesses were
 3 subpoenaed.

4 (5) A person who knowingly fails to attend, answer, and produce records, documents, or other evidence
 5 requested by the commissioner or the commissioner's designee, who knowingly fails to give full and truthful
 6 information or to answer in writing to any material inquiry of the commissioner or the commissioner's designee
 7 relative to the subject of an examination, investigation, or hearing, or who knowingly fails to appear and testify
 8 under oath before the commissioner or the commissioner's designee is subject to the provisions of 33-1-317 and
 9 33-1-318."

10

11 **Section 4.** Section 33-1-318, MCA, is amended to read:

12 **"33-1-318. Injunctions and other remedies.** (1) Whenever it appears to the commissioner that a
 13 person has engaged in or is about to engage in an act or practice constituting a violation of 33-1-107,
 14 33-1-501, 33-1-1302, 33-14-201, chapters 2, 16 through 18, and 30 of this title, part 13 of chapter 20 of this
 15 title, or part 4 of chapter 25 of this title, or any rule or order issued under this code, ~~he~~ the commissioner may:

16 (a) issue an order directing the person to cease and desist from continuing the act or practice after
 17 reasonable notice and opportunity for a hearing;

18 (b) issue a temporary cease and desist order that must remain in effect until 10 days after the hearing
 19 is held. If the commissioner issues a temporary cease and desist order, the respondent has 15 days from receipt
 20 of the order to make a written request for a hearing on the allegations contained in the order. The hearing must
 21 be held within 20 days of the commissioner's receipt of the hearing request unless the time is extended by
 22 agreement of the parties. If the respondent does not request a hearing within 15 days of receipt of the order and
 23 the commissioner does not order a hearing, the order becomes final.

24 (c) without the issuance of a cease and desist order, bring an action in a court of competent jurisdiction
 25 to enjoin ~~such~~ the acts or practices and to enforce compliance with this code or any rule or order issued under
 26 this code. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus
 27 must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.
 28 The commissioner may not be required to post a bond.

29 (2) If a hearing is held on a cease and desist order, both parties have 20 days from the date the hearing
 30 is concluded or from the date a transcript of the hearing is filed, if one is requested, to submit proposed findings

1 of fact, conclusions of law, orders, and supporting briefs to the ~~hearing~~ hearings examiner. The parties have an
 2 additional 10 days within which to submit comments on the opposing party's proposed findings of fact,
 3 conclusions of law, orders, and briefs. A final order must ~~issue~~ be issued within 30 days of the submission of
 4 the comments.

5 (3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this
 6 section, impose a fine not to exceed \$5,000 ~~per~~ for each violation upon a person found to have engaged in an
 7 act or practice constituting a violation of a provision of this code or any rule or order issued under this code. The
 8 fine is in addition to all other penalties imposed by the laws of this state and must be collected by the
 9 commissioner in the name of the state of Montana and deposited in the general fund. Imposition of a fine under
 10 this subsection is an order from which an appeal may be taken pursuant to 33-1-711. If a person fails to pay a
 11 fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of that
 12 person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure
 13 of the person to pay a fine also constitutes a forfeiture of his the right to do business in this state under this
 14 code."

15
 16 **Section 5.** Section 33-3-401, MCA, is amended to read:

17 **"33-3-401. Home office and records -- penalty for unlawful removal of records or assets.** (1) ~~Every~~
 18 Each domestic insurer ~~shall~~ must have and shall maintain its principal place of business and home office in this
 19 state and shall ~~keep therein~~ maintain at its principal place of business or home office complete records of its
 20 assets, transactions, and affairs in accordance with ~~such~~ methods and systems ~~as are~~ customary or suitable
 21 ~~as to the kind or kinds of insurance transacted~~ that it transacts. Records of the insurer's operations and other
 22 financial records reasonably related to its insurance operations for the preceding 5 years must be maintained
 23 and be available to the commissioner or his the commissioner's ~~duly constituted~~ examiner.

24 (2) ~~Every~~ Each domestic insurer ~~shall~~ must have and shall maintain its assets in this state, except ~~as~~
 25 ~~to~~ for:

26 (a) real property and appurtenant personal property ~~appurtenant thereto~~ lawfully owned by the insurer
 27 and located outside this state; and

28 (b) ~~such~~ property of the insurer ~~as may be~~ that is customary, necessary, and convenient to enable and
 29 facilitate the operation of its branch offices and regional home offices located outside this state as referred to
 30 in subsection (4) ~~below~~.

1 (3) Removal of all or a material part of the records or assets of a domestic insurer from this state except
 2 pursuant to a plan of merger or consolidation approved by the commissioner under this code or for ~~such~~
 3 reasonable purposes and periods of time as may be approved by the commissioner in writing in advance ~~of such~~
 4 ~~removal or concealment of such records or assets or material part thereof from the commissioner~~ is prohibited.
 5 Any person who removes or attempts to remove ~~such~~ all or a material part of records or assets ~~or such material~~
 6 ~~part thereof~~ from the home office, ~~or~~ other place of business, ~~or~~ of safekeeping of the insurer in this state with
 7 the intent to remove the ~~same~~ records or assets from this state or who conceals or attempts to conceal ~~the same~~
 8 records or assets from the commissioner, in violation of this subsection, shall upon conviction ~~thereof~~ be guilty
 9 of a felony punishable by a fine of not more than \$10,000 or by imprisonment in the penitentiary for not more
 10 than 5 years or by both ~~such~~ a fine and imprisonment in the discretion of the court. Upon any removal or
 11 attempted removal of ~~such~~ records or assets or upon retention of ~~such~~ records or assets or a material part
 12 ~~thereof~~ of the records or assets outside this state beyond the period ~~therefor~~ specified in the commissioner's
 13 consent under which the records were ~~so~~ removed ~~thereat~~ or upon concealment of or attempt to conceal records
 14 or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer
 15 pursuant to the provisions of chapter 2, part 13.

16 (4) This section ~~shall~~ does not be deemed to prohibit or prevent an insurer from:

17 (a) establishing and maintaining branch offices or regional home offices in other states ~~where~~ when
 18 necessary or convenient to the transaction of its business and keeping ~~therein~~ there the detailed records and
 19 assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by
 20 ~~such an~~ the out-of-state office, as long as ~~such~~ the records and assets are made readily available at ~~such~~ that
 21 office for examination by the commissioner ~~at his request~~ when requested;

22 (b) having, depositing, or transmitting funds and assets of the insurer in or to jurisdictions outside of this
 23 state as reasonably and customarily required in the regular course of its business;

24 (c) making deposits under custodial arrangements as provided by 33-2-604(3).

25 (5) An insurer that fails to maintain records and make them available to the commissioner's staff is
 26 subject to the penalties and procedures in 33-1-317, 33-1-318, and 33-2-119."

27

28 **Section 6.** Section 33-17-1004, MCA, is amended to read:

29 **"33-17-1004. Acting as insurance producer or adjuster without license -- penalty.** ~~Except as~~
 30 ~~provided~~ In addition to the requirements and penalties described in 33-17-201 and 33-17-411, a person who,

1 in this state, acts as an insurance producer or adjuster without having authority to do so by virtue of a license
 2 issued and in force pursuant to this chapter is subject to the provisions of 33-1-317 and 33-1-318 and may be
 3 subject to conviction of a crime.

4 (2) A person convicted under this section shall, for a first conviction, guilty of a misdemeanor and upon
 5 conviction shall be fined \$500 or imprisoned in the county jail for 90 days, or both. For a second conviction, the
 6 person shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 1 year, or both.
 7 For a third or subsequent conviction, the person shall be fined an amount not to exceed \$5,000 or incarcerated
 8 for a term not to exceed 2 years, or both."

9

10 **Section 7.** Section 33-20-1302, MCA, is amended to read:

11 **"33-20-1302. Definitions.** As used in this part, unless the context requires otherwise, the following
 12 definitions apply:

13 (1) "Financing entity" means an underwriter, placement agent, lender, or any entity, other than a
 14 nonaccredited investor, that has a direct ownership in a policy or certificate that is the subject of a viatical
 15 settlement contract, whose sole activity related to the transaction is the provision of funds to effect the viatical
 16 settlement contract, and who has an agreement in writing with one or more licensed viatical settlement providers.

17 (2) "Related provider trust" means a trust established by a licensed viatical settlement provider or a
 18 financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in
 19 connection with a financing transaction. The trust must have a written agreement with the viatical settlement
 20 provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all
 21 statutory and regulatory requirements and under which the trust agrees to make all records and files related to
 22 viatical settlement transactions available to the commissioner.

23 (3) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other
 24 similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a
 25 financing entity or licensed viatical settlement provider.

26 ~~(4)~~ (4) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other
 27 consideration:

28 (i) offers or advertises the availability of viatical settlement contracts;

29 (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a
 30 terminal illness or condition to viatical settlement providers; or

1 (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate
2 holders and one or more viatical settlement providers.

3 (b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to
4 represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or
5 consultant is paid by the viatical settlement provider.

6 ~~(2)(5)~~ (a) "Viatical settlement contract" means a written agreement ~~between a viatical settlement~~
7 ~~provider and the holder of a group or individual life insurance policy insuring the life of an individual with a~~
8 ~~terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in~~
9 ~~which:~~

10 ~~—— (a) the terms establish that the viatical settlement provider pays something of value in return for the~~
11 ~~policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or~~
12 ~~ownership of the insurance policy or certificate to the viatical settlement provider; and~~

13 ~~—— (b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate to name~~
14 ~~the beneficiary; establishing the terms under which compensation or anything of value will be paid, when the~~
15 ~~compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for~~
16 ~~the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the~~
17 ~~insurance policy or certificate of insurance.~~

18 (b) The term includes:

19 (i) a contract for a loan or other financing transaction with a viator secured primarily by an individual or
20 group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life
21 insurance contract, or a loan secured by the cash value of a policy; or

22 (ii) an agreement with a viator to transfer ownership or change the beneficiary designation at a later date
23 regardless of the date that compensation is paid to the viator.

24 (c) The term does not mean a written agreement entered into between a viator and a person having
25 an insurable interest in the viator's life.

26 ~~(3)(6)~~ (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical
27 settlement contracts or offers to enter into or negotiate viatical settlement contracts.

28 (b) ~~A viatical settlement provider may use the term "life settlement provider" to describe the business~~
29 ~~transacted under the license and may use the term "life settlement contract" instead of "viatical settlement~~
30 ~~contract".~~

1 ~~_____~~(e) Viatical settlement provider does not mean:

2 (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution
3 that takes an assignment of a life insurance policy only as collateral for a loan;

4 (ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or
5 pursuant to the laws of the state to which the policy was subject when issued;

6 (iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance
7 policies for any value less than the expected death benefit; or

8 (iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or
9 retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must
10 be reasonable and subject to the standards imposed on licensees under 33-20-1304.

11 ~~(4)(7)~~ (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a
12 viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest
13 in a life insurance policy for the purpose of deriving an economic benefit.

14 (b) A viatical settlement purchase agreement does not include a viatical settlement contract.

15 ~~(5)(8)~~ (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic
16 benefit:

17 (i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance
18 policy; or

19 (ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract
20 or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement
21 contract.

22 (b) A viatical settlement purchaser does not include a licensed viatical settlement provider, ~~or a~~ licensed
23 viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a
24 special purpose entity, or a related provider trust.

25 (9) (a) "Viator" means the owner of a life insurance policy or the certificate holder under a group policy
26 who enters or seeks to enter into a viatical settlement contract.

27 (b) The term does not include a licensed viatical settlement provider, a licensed viatical settlement
28 broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity,
29 or a related provider trust."

30

1 **Section 8.** Section 33-20-1315, MCA, is amended to read:

2 **"33-20-1315. Rules -- standards -- bond.** The commissioner may, in accordance with the provisions
3 of 33-1-313, adopt rules for the purpose of carrying out this part. In addition, the commissioner:

4 (1) may establish standards for evaluating reasonableness of payments under viatical settlement
5 contracts for insured persons who are terminally ill or chronically ill. The authority includes but is not limited to
6 regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale,
7 devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner
8 shall consider payments made in regional and national viatical settlement markets to the extent that this
9 information is available, as well as model standards developed by the national association of insurance
10 commissioners.

11 (2) shall require a bond ~~and an errors and omissions insurance policy of both kinds of licensees or other~~
12 mechanism for financial accountability of viatical settlement providers and viatical settlement brokers; ~~and~~

13 (3) shall adopt rules to establish:

14 (a) trade practice standards for the purpose of regulating advertising and solicitation of viatical
15 settlement contracts; and

16 (b) fees that are commensurate with fees charged pursuant to 33-2-708; and

17 (4) shall require viatical settlement providers or viatical settlement brokers to pay an amount greater
18 than the cash surrender value or accelerated death benefit if the insured is not terminally ill or chronically ill."

19

20 **Section 9.** Section 52-3-803, MCA, is amended to read:

21 **"52-3-803. Definitions.** As used in this part, the following definitions apply:

22 (1) "Abuse" means:

23 (a) the infliction of physical or mental injury; or

24 (b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental
25 health of an older person or a person with a developmental disability without lawful authority. A declaration made
26 pursuant to 50-9-103 constitutes lawful authority.

27 (2) "Department" means the department of public health and human services provided for in 2-15-2201.

28 (3) "Exploitation" means:

29 (a) the unreasonable use of an older person or a person with a developmental disability or of a power
30 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental

1 disability in order to obtain control of or to divert to the advantage of another the ownership, use, benefit, or
2 possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue
3 influence, or intimidation with the intent or result of permanently depriving the older person or person with a
4 developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property;

5 (b) an act taken by a person who has the trust and confidence of an older person or a person with a
6 developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit,
7 or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue
8 influence, or intimidation with the intent or result of permanently depriving the older person or person with a
9 developmental disability of the ownership, use, or benefit of the person's money, assets, or property;

10 (c) the unreasonable use of an older person or a person with a developmental disability or of a power
11 of attorney, conservatorship, or guardianship with regard to an older person or a person with a developmental
12 disability done in the course of an offer or sale of insurance or securities in order to obtain control of or to divert
13 to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or
14 property by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result
15 of permanently depriving the older person or person with a developmental disability of the ownership, use,
16 benefit, or possession of the person's money, assets, or property.

17 (4) "Incapacitated person" has the meaning given in 72-5-101.

18 (5) "Long-term care facility" means a facility defined in 50-5-101.

19 (6) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or
20 psychological functioning or well-being.

21 (7) "Neglect" means the failure of a person who has assumed legal responsibility or a contractual
22 obligation for caring for an older person or a person with a developmental disability or who has voluntarily
23 assumed responsibility for the person's care, including an employee of a public or private residential institution,
24 facility, home, or agency, to provide food, shelter, clothing, or services necessary to maintain the physical or
25 mental health of the older person or the person with a developmental disability.

26 (8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under
27 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse,
28 sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or
29 dependencies brought about by advanced age.

30 (9) "Person with a developmental disability" means a person 18 years of age or older who has a

1 developmental disability, as defined in 53-20-102.

2 (10) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily
3 organ or function.

4 (11) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
5 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

6

7 **Section 10.** Section 52-3-825, MCA, is amended to read:

8 **"52-3-825. Penalties.** (1) ~~Any~~ A person who purposely or knowingly fails to make a report required by
9 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty
10 of an offense and upon conviction is punishable as provided in 46-18-212.

11 (2) ~~Any~~ An individual who purposely or knowingly abuses, sexually abuses, neglects, or exploits an
12 older person or a person with a developmental disability is guilty of a crime misdemeanor ~~and upon a first~~
13 ~~conviction may be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to~~
14 ~~exceed 1 year, or both. Upon a second or succeeding conviction, an individual~~ and may be imprisoned for a term
15 not to exceed 10 years ~~and may~~ or be fined an amount not to exceed \$10,000, or both."

16

17 NEW SECTION. Section 11. Codification instruction. [Section 1] is intended to be codified as an
18 integral part of Title 33, chapter 17, part 10, and the provisions of Title 33, chapter 17, part 10, apply to [section
19 1].

20

21 NEW SECTION. SECTION 12. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 17 AND [THIS ACT] ARE BOTH
22 PASSED AND APPROVED, THEN [SECTION 10 OF THIS ACT], AMENDING 52-3-825, IS VOID.

23

24 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

25

26 NEW SECTION. Section 14. Applicability. [This act] applies to viatical settlement contracts entered
27 into on or after [the effective date of this act].

28

- END -